



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MOHAMED MUSAID,

Petitioner,

- against -

MICHAEL KIRKPATRICK, *Superintendent of*
Clinton Correctional Facility,

Respondent.
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19-CV-7944 (AT) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

In seeking leave to appeal to the Court of Appeals, Petitioner submitted a six-page letter detailing a single basis for the appeal: whether or not the Court sufficiently inquired regarding Petitioner's waiver of his right to assert an insanity defense. Claims may not be advanced in a habeas corpus petition unless they have been fully exhausted in state court proceedings. 28 U.S.C. § 2254(b). To exhaust, a Petitioner must make one complete round of appellate review, which, in New York, includes leave to appeal to the Court of Appeals. *Galdamez v. Keane*, 394 F.3d 68, 73-74 (2d Cir. 2005). Where a petitioner specifically raises less than all issues in their request for leave to appeal, any issue not raised will be deemed unexhausted and procedurally defaulted. *Jordan v. Lefevre*, 206 F.3d 196, 198-99 (2d Cir. 2000). Moreover, a petitioner who has sought leave by calling out and discussing one issue in particular, cannot preserve an issue that is not specifically addressed by including a catchall request for the Court to address all issues. *Id.*

Exhaustion of state remedies may not be overlooked by the Court, even if not raised by the Respondent. *Jelinek v. Costello*, 247 F. Supp. 2d 212, 263 (E.D.N.Y. 2003);

Ramos v. Keane, No. 98-CV-1604, 2000 WL 12142, at *3 (S.D.N.Y. Jan. 6, 2000). Accordingly, by March 29, 2021, Petitioner shall submit a letter brief of no more than five pages explaining why the issue of Petitioner's competency to stand trial is not procedurally barred. By April 19, 2021, Respondent shall submit a responding letter brief of no more than five pages. By April 29, 2021, Petitioner shall submit a reply, if any, of no more than three pages.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', written over a horizontal line.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: February 25, 2021
New York, New York

Copies transmitted this date to all counsel of record.